



February 13, 2003

Michael K. Powell, Chairman
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Triennial Review of Unbundled Network Elements*
WCB Docket No. 01-338, *ex parte* communication

Dear Chairman Powell and Commissioners:

As your deliberations in this proceeding continue, the National Association of State Utility Consumer Advocates ("NASUCA")¹ recommends that you give serious consideration to the proposals contained in the February 6, 2003 *ex parte* of the National Association of Regulatory Utility Commissioners ("NARUC"). The NARUC proposals provide a solid basis for the Commission to continue the course directed by the Supreme Court in *Verizon v. FCC*² while responding to the remand from the D.C. Circuit Court of Appeals in *USTA v. FCC*.³ As noted by NARUC, its proposal -- which properly places

¹ NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

² *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 122 S. Ct. 1646, 1661, 152 L. Ed.2d 701 (2002).

³ *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

significant responsibility on the states for the granular analysis of local conditions stemming from *USTA* -- is likely to be upheld in the almost inevitable appeals from Commission's decision in these proceedings.

There is, however, one significant respect in which NASUCA would expand on the NARUC proposal. The NARUC proposal does not adequately consider the importance of the unbundled network element platform ("UNE-P"). As discussed in detail in several recent NASUCA filings,⁴ the requirement that incumbent local exchange carriers ("ILECs") lease the UNE-P has led to a significant portion of the residential and small business local exchange competition currently experienced by the consumers represented by NASUCA members. For example, in Ohio, SBC Ohio acknowledges that 240,000 of the 260,000 CLEC residential lines in its territory -- or 92% -- are served through the UNE-P.

The record clearly shows the difficulties and costs of transitioning away from the UNE-P for mass-market customers, which proves that provision of competitive local service to residential and small business customers is impaired without the UNE-P. Thus the UNE-P (the specific combination of the local loop, local switching and interoffice transport that is integral to ILEC provision of local service) must continue to be available to competitive local exchange carriers ("CLECs").

In essence, the availability of the combination UNE-P can be seen as a distinct issue from the availability of the individual elements -- loop, switching and transport. Based on record evidence, NASUCA would recommend adding to NARUC's proposed presumptions a presumption which holds that in all zones, the UNE-P should remain on the national list of methods available to provide service to mass market customers. States should be able to craft their own models for dealing with UNE issues, and in doing so should have the broadest range of tools -- including the UNE-P.

Deleting the UNE-P from the list of unbundled network elements -- whether by removing local switching from the unbundling requirements or by some other means -- would leave residential and small business customers with no choice other than to return to the ILEC for local service. This would significantly undermine, if not eliminate, the initial competitive efforts -- like those in Ohio -- through which competitors are at last making inroads into the ILECs' century-old monopoly power. It would also be an unjust and unreasonable step in the direction towards unregulated monopolies, contrary to the 1996 Act and the policies of this Commission.

As NASUCA stated in the December 16, 2002 *ex parte*:

Residential and small business customers have a real stake in the outcome of this proceeding. We were promised the benefits of the 1996 Act; we

⁴ See NASUCA's January 27, 2003 *ex parte*, the study attached to the January 27 *ex parte*, NASUCA's December 16, 2002 *ex parte* and the NASUCA Resolution attached to the December 16 *ex parte*.

have only lately seen some of those benefits; and we remain ... susceptible [to] ILEC monopoly power or market dominance.

Now is not the time to pull the rug out from under the emerging competitive marketplace by eliminating the UNE-P. NASUCA appreciates the Commission's consideration of the interests of residential and small business customers.

Yours truly,

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